

AMENDED IN ASSEMBLY APRIL 28, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2897

Introduced by Assembly Member Bogh

February 20, 2004

An act to amend Sections 7500, ~~7502~~, 7503, 7510, 7511, and 7515 of, and to repeal Section 7555 of the Penal Code, relating to prisoners, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2897, as amended, Bogh. Prisoners: medical testing.

Existing law makes legislative findings and declarations concerning the spread of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) within state and local correctional institutions. Existing law provides that a law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person who has been arrested or taken into custody, or a person on probation or parole, or an inmate of a correctional institution who believes that he or she has come into contact with the bodily fluids of another inmate may request an HIV test of that person. Existing law requires that the chief medical officer of a correctional facility decide whether to order a test of an inmate who is the subject of a report by a law enforcement officer within 5 days. Existing law provides that these provisions shall be repealed January 1, 2005, as specified.

This bill would delete the repeal of these provisions. This bill would amend legislative findings and declarations with respect to the exposure of law enforcement personnel to HIV. ~~This bill would clarify that for~~

~~the purposes of these provisions, “inmate” includes any person who is on parole.~~ This bill would provide that an incident report filed by a law enforcement employee containing a request for HIV testing of an inmate shall not be delayed, as specified. This bill would require that the chief medical officer decide whether to order a test of an inmate who is the subject of a report by a law enforcement employee within 24 hours of receiving the report. This bill would provide that a test shall be ordered if the chief medical officer finds that there is a *significant* risk that HIV was transmitted ~~and shall consider any adverse health effect on institution staff or inmates required to undergo prophylactic treatment for HIV.~~ This bill would provide an appeal by a law enforcement employee of the decision of a chief medical officer whether to order the subject of a report to undergo HIV testing shall be heard within 7 calendar days. This bill would also provide that when an appeal is filed by a law enforcement employee the decision shall be rendered within 2 days of the hearing.

By requiring local officials to perform new duties and additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7500 of the Penal Code is amended to
- 2 read:
- 3 7500. The Legislature finds and declares all of the following:



1 (a) The public peace, health, and safety is endangered by the
2 spread of the human immunodeficiency virus (HIV) and acquired
3 immune deficiency syndrome (AIDS) within state and local
4 correctional institutions.

5 (b) The spread of AIDS within prison and jail populations
6 presents a grave danger to inmates within those populations, law
7 enforcement personnel, and other persons in contact with a
8 prisoner infected with the AIDS virus, both during and after the
9 prisoner's confinement. Law enforcement personnel and prisoners
10 are particularly vulnerable to this danger, due to the high number
11 of assaults, violent acts, and ~~other exposures to~~ *transmissions of*
12 bodily fluids that occur within correctional institutions.

13 (c) AIDS has the frightening potential of spreading more
14 rapidly within the closed society of correctional institutions than
15 outside these institutions. This major public health problem is
16 compounded by the further potential of rapid spread of
17 communicable disease outside correctional institutions, through
18 contacts of an infected prisoner who is not treated and monitored
19 upon his or her release, or by law enforcement employees who are
20 unknowingly infected.

21 (d) New diseases of epidemic proportions such as AIDS may
22 suddenly and tragically infect large numbers of people. This title
23 primarily addresses a current problem of this nature, the spread of
24 AIDS among those in correctional institutions and among the
25 people of California.

26 (e) HIV and AIDS pose a major threat to the public health and
27 safety of those governmental employees and others whose
28 responsibilities bring them into most direct contact with persons
29 afflicted with those illnesses, and the protection of the health and
30 safety of these personnel is of equal importance to the people of
31 the State of California as the protection of the health of those
32 afflicted with the diseases who are held in custodial situations.

33 (f) Testing described in this title of individuals housed within
34 state and local correctional facilities for evidence of infection by
35 HIV or AIDS would help to provide a level of information
36 necessary for effective disease control within these institutions and
37 would help to preserve the health of public employees, inmates,
38 and persons in custody, as well as that of the public at large. This
39 testing is not intended to be, and shall not be construed as, a
40 prototypical method of disease control for the public at large.

1 ~~SEC. 2.—Section 7502 of the Penal Code is amended to read:~~
2 ~~7502.—As used in this title, the following terms shall have the~~
3 ~~following meanings:~~

4 ~~(a) “Correctional institution” means any state prison, county~~
5 ~~jail, city jail, California Youth Authority facility, county or~~
6 ~~city-operated juvenile facility, including juvenile halls, camps, or~~
7 ~~schools, or any other state or local correctional institution.~~

8 ~~(b) “Counseling” means counseling by a licensed physician~~
9 ~~and surgeon, registered nurse, or other health professional who~~
10 ~~meets guidelines which shall be established by the State~~
11 ~~Department of Health Services for purposes of providing~~
12 ~~counseling on AIDS to inmates, persons in custody, and other~~
13 ~~persons pursuant to this title.~~

14 ~~(c) “Law enforcement employee” means correctional officers,~~
15 ~~peace officers, and other staff of a correctional institution;~~
16 ~~California Highway Patrol officers, county sheriff’s deputies, city~~
17 ~~police officers, parole officers, probation officers, and city,~~
18 ~~county, or state employees including but not limited to, judges,~~
19 ~~bailiffs, court personnel, and public defenders, who, as part of the~~
20 ~~judicial process involving an inmate of a correctional institution,~~
21 ~~or a person charged with a crime, including a minor charged with~~
22 ~~an offense for which he or she may be made a ward of the court~~
23 ~~under Section 602 of the Welfare and Institutions Code, are~~
24 ~~engaged in the custody, transportation, or care of these persons.~~

25 ~~(d) “AIDS” means acquired immune deficiency syndrome.~~

26 ~~(e) “Human immunodeficiency virus” or “HIV” means the~~
27 ~~etiologic virus of AIDS.~~

28 ~~(f) “HIV test” or “HIV testing” means any clinical laboratory~~
29 ~~test approved by the federal Food and Drug Administration for~~
30 ~~HIV, component of HIV, or antibodies to HIV.~~

31 ~~(g) “Inmate” means any of the following:~~

32 ~~(1) A person in a state prison, or city and county jail, who has~~
33 ~~been either convicted of a crime or arrested or taken into custody,~~
34 ~~whether or not he or she has been charged with a crime.~~

35 ~~(2) Any person in a California Youth Authority facility, or~~
36 ~~county or city-operated juvenile facility, who has committed an~~
37 ~~act, or been charged with committing an act specified in Section~~
38 ~~602 of the Welfare and Institutions Code.~~

39 ~~(3) Any person on parole.~~

1 ~~(h) “Bodily fluids” means blood, semen, or any other bodily~~
2 ~~fluid identified by either the federal Centers for Disease Control~~
3 ~~or State Department of Health Services in appropriate regulations~~
4 ~~as capable of transmitting HIV.~~

5 ~~(i) “Minor” means a person under 15 years of age.~~

6 ~~SEC. 3.~~

7 SEC. 2. Section 7503 of the Penal Code is amended to read:

8 7503. The Department of Corrections, the Department of the
9 Youth Authority, and county health officers shall adopt guidelines
10 permitting a chief medical officer to delegate his or her medical
11 responsibilities under this title to other qualified physicians and
12 surgeons, and his or her nonmedical responsibilities to other
13 qualified persons, as appropriate. The chief medical officer shall
14 not, however, delegate the duty to determine whether mandatory
15 testing is required as provided for in Chapter 2 (commencing with
16 Section 7510) except to another qualified physician ~~in the event of~~
17 ~~his or her unavailability. designated to act as chief medical officer~~
18 ~~in the chief medical officer’s absence.~~

19 ~~SEC. 4.~~

20 SEC. 3. Section 7510 of the Penal Code is amended to read:

21 7510. (a) A law enforcement employee who believes that he
22 or she came into contact with bodily fluids of either an inmate of
23 a correctional institution, a person not in a correctional institution
24 who has been arrested or taken into custody whether or not the
25 person has been charged with a crime, including a person detained
26 for or charged with an offense for which he or she may be made
27 a ward of the court under Section 602 of the Welfare and
28 Institutions Code, or a person on probation or parole due to
29 conviction of a crime, shall report the incident through the
30 completion of a form provided by the State Department of Health
31 Services. The form shall be directed to the chief medical officer,
32 as defined in subdivision (c), who serves the applicable law
33 enforcement agency. Utilizing this form the law enforcement
34 employee may request an HIV test of the person who is the subject
35 of the report. The forms may be combined with regular incident
36 reports or other forms used by the correctional institution or law
37 enforcement agency, however the processing of a form by the chief
38 medical officer containing a request for HIV testing of the subject
39 person shall not be delayed by the processing of other reports or
40 forms.

(b) The report required by subdivision (a) shall be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. The report shall include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. The law enforcement employee shall assist in the investigation of the incident, as requested by the chief medical officer.

(c) For purposes of this section and Section 7511, "chief medical officer" means:

(1) In the case of a report filed by a staff member of a state prison, the chief medical officer of that facility.

(2) In the case of a parole officer filing a report, the chief medical officer of the nearest state prison.

(3) In the case of a report filed by an employee of the California Youth Authority, the chief medical officer of the facility.

(4) In the case of a report filed against a subject who is an inmate of a city or county jail or a county- or city-operated juvenile facility, or who has been arrested or taken into custody whether or not the person has been charged with a crime, but who is not in a correctional facility, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, the county health officer of the county in which the individual is jailed or charged with the crime.

(5) In the case of a report filed by a probation officer, the county health officer of the county in which the probation officer is employed.

(6) In any instance where the chief medical officer, as determined pursuant to this subdivision, is not a physician or surgeon, the chief medical officer shall designate a physician or surgeon to perform his or her duties under this title.

~~SEC. 5.~~

SEC. 4. Section 7511 of the Penal Code is amended to read:

7511. (a) The chief medical officer shall, regardless of whether a report filed pursuant to Section 7510 contains a request for HIV testing, decide whether or not to require HIV testing of the inmate or other person who is the subject of the report filed

1 pursuant to Section 7510, within 24 hours of receipt of the report.
2 If the chief medical officer decides to require HIV testing, he or
3 she shall specify in his or her decision the circumstances, if any,
4 under which followup testing will also be required.

5 (b) The chief medical officer shall order an HIV test only if he
6 or she finds that, considering all of the facts and circumstances,
7 there is a *significant* risk that HIV was transmitted. In making this
8 decision, the chief medical officer shall take the following factors
9 into consideration:

10 (1) Whether an exchange of bodily fluids occurred which could
11 have resulted in a *significant* risk of AIDS infection, based on the
12 latest written guidelines and standards established by the federal
13 Centers for Disease Control and the State Department of Health
14 Services.

15 (2) Whether the person exhibits medical conditions or clinical
16 findings categorizing him or her as a possible AIDS victim.

17 (3) Whether the health of the institution staff or inmates may
18 have been endangered as to AIDS infection, ~~or any adverse health~~
19 ~~effects on institution staff or inmates required to undergo~~
20 ~~prophylactic treatment for HIV~~, resulting from the reported
21 incident.

22 (c) Prior to reaching a decision, the chief medical officer shall
23 receive written or oral testimony from the law enforcement
24 employee filing the report, from the subject of the report, and from
25 witnesses to the incident, as he or she deems necessary for a
26 complete investigation. The decision shall be in writing and shall
27 state the reasons for the decision. A copy shall be provided by the
28 chief medical officer to the law enforcement employee who filed
29 the report and to the subject of the report, and where the subject is
30 a minor, to the parents or guardian of the minor, unless the parent
31 or guardian of the minor cannot be located.

32 ~~SEC. 6.~~

33 *SEC. 5.* Section 7515 of the Penal Code is amended to read:

34 7515. (a) A decision of the chief medical officer made
35 pursuant to Section 7511, 7512, or 7516 may be appealed, within
36 three calendar days of receipt of the decision, to a three-person
37 panel, either by the person required to be tested, his or her parent
38 or guardian when the subject is a minor, the law enforcement
39 employee filing a report pursuant to either Section 7510 or 7516,
40 or the person requesting testing pursuant to Section 7512,

1 whichever is applicable, or the chief medical officer, upon his or
2 her own motion. If no request for appeal is filed under this
3 subdivision, the chief medical officer's decision shall be final.

4 (b) Depending upon which entity has jurisdiction over the
5 person requesting or appealing a test, the Department of
6 Corrections, the Department of the Youth Authority, the county,
7 the city, or the county and city shall convene the appeal panel and
8 shall ensure that the appeal is heard within 30 calendar days from
9 the date an appeal request is filed pursuant to subdivision (a).
10 Appeals filed by a law enforcement employee pursuant to a request
11 made under Section 7510 shall be heard within seven calendar
12 days.

13 (c) A panel required pursuant to subdivision (a) or (b) shall
14 consist of three members, as follows:

15 (1) The chief medical officer making the original decision.

16 (2) A physician and surgeon who has knowledge in the
17 diagnosis, treatment, and transmission of HIV, selected by the
18 Department of Corrections, the Department of the Youth
19 Authority, the county, the city, or the county and city. The
20 physician and surgeon appointed pursuant to this paragraph shall
21 preside at the hearing and serve as chairperson.

22 (3) A physician and surgeon not on the staff of, or under
23 contract with, a state, county, city, or county and city correctional
24 institution or with an employer of a law enforcement employee as
25 defined in subdivision (b) of Section 7502, and who has
26 knowledge of the diagnosis, treatment, and transmission of HIV.
27 The physician and surgeon appointed pursuant to this paragraph
28 shall be selected by the State Department of Health Services from
29 a list of persons to be compiled by that department. The State
30 Department of Health Services shall adopt standards for selecting
31 persons for the list required by this paragraph, as well as for their
32 reimbursement, and shall, to the extent possible, utilize its normal
33 process for selecting consultants in compiling this list.

34 The Legislature finds and declares that the presence of a
35 physician and surgeon on the panel who is selected by the State
36 Department of Health Services enhances the objectivity of the
37 panel, and it is the intent of the Legislature that the State
38 Department of Health Services make every attempt to comply with
39 this subdivision.

(d) The Department of Corrections, the county, the city, or the county and city shall notify the Office of AIDS in the State Department of Health Services when a panel must be convened under subdivision (a). Within 10 calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (c) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b). For appeals filed by a law enforcement officer pursuant to a request made under Section 7510, within two calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (d) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (c).

(e) If the Office of AIDS in the State Department of Health Services fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections, the county, the city, or the county and city shall appoint a physician or surgeon who has knowledge of the diagnosis, treatment, and transmission of HIV to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections, the county, the city, or the county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections, the Department of the Youth Authority, the county, the city, or the county and city shall, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

No panel shall be created pursuant to this paragraph by a county, city, or county and city correctional institution except with the prior approval of the local health officer.

(f) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian and, if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable and, if the person is a minor, his or her parent or guardian.

(g) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(h) When a hearing is sought pursuant to this section, the decision shall be rendered within 10 days of the date upon which the appeal is filed pursuant to subdivision (a). When an appeal is filed by a law enforcement employee pursuant to a request made under Section 7510 the decision shall be rendered within two days of the hearing. A unanimous vote of the panel shall be necessary in order to require that the subject of the hearing undergo HIV testing.

The criteria specified in Section 7511 for use by the chief medical officer shall also be utilized by the panel in making its decision.

The decision shall be in writing, stating reasons for the decision, and shall be signed by the members. A copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of the institution, except that, when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the person, unless the parent or guardian cannot be located.

~~SEC. 7.~~

SEC. 6. Section 7555 of the Penal Code is repealed.

~~SEC. 8.~~

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

1 to Part 7 (commencing with Section 17500) of Division 4 of Title
2 2 of the Government Code. If the statewide cost of the claim for
3 reimbursement does not exceed one million dollars (\$1,000,000),
4 reimbursement shall be made from the State Mandates Claims
5 Fund.

6 ~~SEC. 9.~~

7 *SEC. 8.* This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety
9 within the meaning of Article IV of the Constitution and shall go
10 into immediate effect. The facts constituting the necessity are:

11 Law enforcement employees are undergoing stress unnecessary
12 and medical treatment in cases in which there has been an exposure
13 to HIV but no infection because of the inability to test prisoners for
14 HIV in a timely manner.

